FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 497.

MARIO MERCADO E HIJOS, *Petitioner,*

v.

ELVIRA OLIVIERI COMMINS, ET AL., *Respondents.*

ORAL ARGUMENT BY PEDRO M. PORRATA ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FIRST CIRCUIT.*

WILLIAM CATTRON RIGBY,
PEDRO M. PORRATA,
Attorneys for Petitioner.

RIGBY, LEON and WEILL,
FRED W. LLEWELLYN,
Of Counsel.

* Reported by H. S. Middlemiss, Columbian Bldg., Washington, D. C., and as revised by counsel.

THE COURT PRESS, 130 Cedar Street, N. Y. C.

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Washington, D. C.,
April 24, 1944.

The above-entitled cause was argued in The Supreme Court of the United States, commencing at 3:28 o'clock p. m. on Monday, April 24, 1944.

Before:

HONORABLE HARLAN F. STONE, the Chief Justice; and
HONORABLE OWEN J. ROBERTS;
HONORABLE HUGO L. BLACK;

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* Reported by H. S. Middlemiss, Columbian Bldg., Washington, D. C., and as revised by counsel.

HONORABLE STANLEY F. REED;
HONORABLE FELIX FRANKFURTER;
HONORABLE WILLIAM O. DOUGLAS;
HONORABLE FRANK MURPHY;
HONORABLE ROBERT H. JACKSON; and
HONORABLE WILEY RUTLEDGE, Associate Justices, there being

Present:

On behalf of the Petitioner:

WILLIAM CATTRON RIGBY, FRED W. LLEWELLYN, and PEDRO M. PORRATA, ESQUIRES; and

On behalf of the Respondent:

(The case was submitted without oral argument for the Respondent.)

Thereupon the following proceedings were had and oral arguments made:

PROCEEDINGS AND ORAL ARGUMENTS

The Chief Justice: Case No. 497.

The Clerk of the Court: Counsel for the petitioner are present.

The case is submitted for the respondent.

The Chief Justice: Proceed, please.

ORAL ARGUMENT ON BEHALF OF THE PETITIONER

By Pedro M. Porrata

MAY IT PLEASE THE COURT: From the decision of the Circuit Court of Appeals in the De Castro case, it can be easily gathered that Rule 39-B did not arise from judicial necessity or any other legal justification but only on account of continuous reversals of judgments of that court by this Supreme Court. The Circuit Court says so in

the opinion in that De Castro case. Said opinion shows, therefore, that the Circuit Court is not in position, because of its mental attitude, to give due regard to the right of appeal granted by Congress to the Puerto Rican people. It was because the Circuit Court interpreted these reversals as amounting to a declaration that there was no use of entertaining appeals from Puerto Rico, that Rule 39-B was adopted.

That was the reason for the adoption of Rule 39-B and that is why, in the mind of the Circuit Court below, Rule 39-B works as a mathematical formula instead of as a legal formula: When an appeal from Puerto Rico reaches the Circuit Court the Rule as interpreted under the circumstances prejudices the case of the appellant from the very start.

When Congress gave Puerto Rican litigants the right to appeal to the Circuit Court—and no Court has the right to nullify the will of Congress—it established a jurisdictional amount or the existence of a Federal question as the sole ground for taking the appeal. Who can take that right away from us except Congress? That is the question. Or, who can legally prejudice that right in any way by adding or detracting?

The way we understand the doctrine laid down by this Supreme Court in regard to the respect to be accorded decisions of local courts in local matters, is as follows:

The appeal court must take the case under consideration; look into the facts and the law applicable; and, after making an examination of it from every reasonable angle, if the court reaches the conclusion that the opinion below is not unreasonable, illogical, contrary to sound judicial reasoning or otherwise unsustainable, the judgment below is allowed to stand even though the appeal court may have a different opinion. That is: on the examination of the case, comparison and distinguishing

of facts, the appeal court gets into the merits of the opinion for the purpose of determining that there is nothing making the reversal of the judgment below necessary.

Take our case, for example:

We sustained here that the Supreme Court of Puerto Rico reached a conclusion of fact which, under the constant jurisprudence of the Supreme Court of Spain, of Puerto Rico itself, of all the courts, of the states of the Union and of the English Court of Chancery, required that court to decide the case in favor of Petitioner, and, therefore, that the judgment appealed from, should not be allowed to stand by this Court in the exercise of its jurisdiction to review.

Here we have a case of a person having notice that another person had an option to realty. The Supreme Court of Puerto Rico found that Respondents had notice, and that they deliberately violated the option; yet, after making that finding, held in favor of the mala fide purchaser; an error as patent as ever committed by courts.

In our brief, especially in our last reply brief, we cited cases from the same Supreme Court of Puerto Rico, following, as a matter of fact, decisions of the Supreme Court of Spain, which clearly indicate that, upon the facts of our case, Petitioner is entitled to a decision in its favor.

We showed therein that under the decisions of the Spanish Supreme Court, interpreting the same provisions of our code involved in this case, no mala fide purchaser is ever allowed to escape with the fruits of his mala fide conduct. We showed by decisions of the Court of Chancery in England also that no mala fide purchaser has been allowed, under the English law, to escape with the fruit of his expressed or implied malice. Shall we say that the Supreme Court of Puerto Rico has any reason for rendering a decision contrary to those unquestionable

principles of civilized law? Its judgment in this case contrary to those principles, must be understood as obviously erroneous; for if the decision of the Supreme Court of Puerto Rico in this case goes against the decisions of courts in the United States, to the decisions of the Supreme Court of Spain, to the decisions of the Supreme Court of Puerto Rico itself, the people of Puerto Rico are entitled to have that decision reversed as being clearly against the overwhelming understanding of the courts in all jurisdictions to which we have the right to appeal for help in the interpretation of our laws. There is no ground in the opinion below to justify the allegation that the Supreme Court of Puerto Rico merely intended to change the law of the Island. It simply went wrong in the application of the law to the facts, as clearly indicated by the decisions cited. If it be argued, though nothing is said in the opinion, that a change of the law is contemplated, that was to be done by the legislature and not by our Supreme Court, which should be understood in this case as merely having committed an error deserving of a complete reversal of the judgment. The legislature is the only one with power to abolish the requirement of good faith in dealings between human beings.

Now, there is no mystery in the principle involved in regard to the respect to be accorded to decisions of local courts on local matters. The doctrine which accords respect to findings of lower courts on appeal, is similar in nature; appeal courts will not reverse findings of lower courts unless there is some justification. When is it that there is such justification? Well, in some cases, the logical processes that the mind naturally undertakes to reach a conclusion are wanting; in others, the findings are against the overwhelming weight of the evidence; in others, the finding is unreasonable or arbitrary; in others, unwarranted, etc.; and, therefore, the findings are reversed.

Appeal courts do not simply close their eyes and say that they are just not going to review the findings of the Court below. No; they have to reason out the situation offered for review; for the discovery of the presence of an error in a case, sometimes required a great deal of examination, distinguishing and comparison. No mathematical formula is used in regard to the review of findings as well as no mathematical formula as represented by Rule 39-B should be allowed, and no prejudice should be enhanced in the review of decisions by United States Courts in cases arising from Puerto Rico. The granting of that power to review, in a sense, is a political question that no court has the power to interfere with, to amend or modify. Congress and the President know why the right to review was created.

Whenever a mental attitude precedes or follows the establishment of a rule as Rule 39-B in relation to appeals, we have something dangerous to the administration of justice; for then the formula is not applied with judicial significance after examination and comparison without prejudice of the question involved. It is applied under the impression that the appeal should be denied and that the judgment of the Supreme Court below is to be considered as practically unappealable.

Coming, again, back to this case: We see that the Supreme Court of Puerto Rico mentioned certain sections of our code and provisions of the Mortgage Law. We, however, sustain that none of the statutes mentioned by the court below are involved in this controversy.

What is then involved in this case? According to the judgment of Petitioner, a statute written nowhere, a law which in the United States, in Spain, in Puerto Rico, in England and everywhere, where civilized law governs, provides that no mala fide purchaser will be allowed by a court to escape with the fruits of his misconduct. We will

call the attention of your Honors, again, in relation to this principle, to the findings of the court below. It shows implicitly where it is that the Insular Court decided absolutely contrary to a principle recognized everywhere in our jurisdiction.

In the application of Rule 39-B, your Honors, we must distinguish between certain principles of law, as the one involved in this case, which are the same everywhere in the world and the principles of purely local law of the Island of Puerto Rico; for it is clear that this Supreme Court of the United States here has as much justification and ability to deal with general principles of logic and law as we have in Puerto Rico. When the question involved in any particular case is not any matter purely of local law but a matter of principle or of public policy, are we going to say that here in this Supreme Court the principle will have a different meaning than it does for every logical thinking community anywhere on earth? I do not think so. The Supreme Court of Puerto Rico may, as any other court, go wrong in the application or non-application of an applicable principle. We will read the finding of the court below in the instant and the ejectment case (the *ejectment case* is part of this proceeding as shown by the opinion of the court below).

In the instant case, we filed an action to exercise the option. While our action was pending, Respondents filed an ejectment action against the partnership, which was tried in the District Court of Ponce and decided in favor of the partnership. Appeal was taken to the Supreme Court of Puerto Rico which sustained the decision of the District Court in our favor making the following finding of facts:

> "We do not wish to reach any conclusions in this case which might affect the decision of the questions on their merits, but we do state that the evidence of

> the witnesses has shown (and this refers to the facts proven) that the plaintiffs had knowledge of the option alleged by the defendant before the signing of deed number 14 of March 9th, 1937, * * * that they knew that the defendant was trying to enforce said right before the cancellation of the mortgage, and that the defendant was never given a chance to make use of its option."

Mr. Associate Justice Black: What page of the record is this ejectment suit referred to and is this quotation to be found?

Mr. Porrata: That quotation is from the opinion in the ejectment suit. 55 D. P. R. 43.

That is cited in our brief. The Supreme Court of Puerto Rico in the opinion refers to the ejectment case.

Mr. Associate Justice Roberts: What was this case? This was a case to enforce an option, was it?

Mr. Porrata: Yes.

Mr. Associate Justice Roberts: Did they sustain you in the ejectment suit?

Mr. Porrata: Yes, sir.

Mr. Associate Justice Roberts: And left you in possession?

Mr. Porrata: Yes.

Mr. Associate Justice Roberts: Then when the other party turned about and started to enforce his option—or you wanted to enforce the option——

Mr. Porrata (interposing): Yes.

Mr. Associate Justice Roberts (continuing): —they held that there was a defense against that?

Mr. Porrata: Yes; that knowledge——

Mr. Associate Justice Roberts (interposing): Because the mortgage notes did not have any reference to the option?

Mr. Porrata: Exactly, Sir.

Mr. Associate Justice Roberts: And they said the man who dealt with the notes knew?

Mr. Porrata: Yes. If we take the finding in the ejectment case and the instant case, and judge it according to applicable principles in regard to the unwritten law which requires good faith in human dealings, the case must be decided in our favor. If we take this case to any court in the States, what will it say on the face of the findings? If we take it and judge it according to *Quintana* v. *Capital of Puerto Rico*, 51 D. P. R. 103, the purchaser was told therein that the seller was not the owner of the property. Quintana lost, irrespective of everything else, *because of the existence of notice and knowledge.*

That is why we say in our statement of points, not that we wanted the Court to review the evidence, because the finding of fact on the evidence was in our favor, but that we wanted the Court to carry the finding to its natural legal conclusion.

Mr. Associate Justice Frankfurter: How did the Supreme Court of Puerto Rico deal with this question of good faith?

Mr. Porrata: Held for the mala fide buyer.

Mr. Associate Justice Frankfurter: Yes, but——

Mr. Associate Justice Roberts (interposing): They said the purchaser had a right to stand on the record no matter what he knew. That is what they held, is it?

Mr. Porrata: Yes, and we say the record informed him anyway.

Mr. Associate Justice Roberts: You say he had actual knowledge?

Mr. Porrata: We say he had actual knowledge and he had constructive knowledge, too, and he acquired all that information before he bought the property.

Mr. Associate Justice Frankfurter: What did they do with the actual knowledge point?

Mr. Porrata: They find he had actual knowledge.

Mr. Associate Justice Frankfurter: They found that?

Mr. Porrata: Yes.

Mr. Associate Justice Frankfurter: And what legal conclusion did they draw from it?

Mr. Associate Justice Roberts: That it was not material.

Mr. Associate Justice Frankfurter: What did they say? Did they say anything about it?

Mr. Porrata: No.

Mr. Associate Justice Frankfurter: They found knowledge?

Mr. Porrata: Yes.

Mr. Associate Justice Frankfurter: Actual acknowledge?

Mr. Porrata: Yes.

Mr. Associate Justice Frankfurter: Did they say anything about it?

Mr. Porrata: They did not touch it.

Mr. Associate Justice Frankfurter: They found knowledge of the fact but did not take account of it?

Mr. Porrata: Yes.

Now, in the ejectment case, on the contrary, as is stated before, they decided in our favor. In departing from the principle which controlled the decision in that case, the court below committed plain and patent error.

Respondents' brief itself goes merely on prejudice and shows that Petitioner should be allowed to prevail in this court. In regard to the way this case is treated in that brief, may we call the attention of Respondents to the fact that we lawyers sometimes are highly responsible for the decisions of courts, and that it is an act highly reproachable to try to win by awakening prejudice against a party or to go out of the record into an unwarranted exhibition of passion.

Don Elvira simply made the contract when she needed a loan in 1932. The economical situation then was bad. Measures taken in Washington in 1933 to release the nation from trouble, changed the situation. In 1936, the Lluveras people, who did nothing for Dona Elvira in 1932, when she needed help, now that the economic situation was better, induced her to break the contract. Because the partnership protests and tries to enforce the option, Respondents treat it unfairly in their brief. This looks like the method they follow in Europe: Make a contract; then break it; and if the injured party does not like the infringement, the whole matter is settled by shooting.

The agreement between Dona Elvira and the partnership amounts to private contractual law between two persons. Anybody who knew of it was bound to respect it, especially it being in relation to land. In regard to public laws, whether civil or criminal, all persons are presumed conclusively to know of them. A private law must be also respected and abided by everybody who knows of its existence.

That is why we want this case to be examined, your Honors; and to be decided according to the real principle of law applicable.

Mr. Associate Justice Frankfurter: Is it your suggestion that this was a surprise decision like some made in this Court and the Supreme Court of Puerto Rico changed its law?

Mr. Porrata: Absolutely. That the Court below committed plain error.

Mr. Associate Justice Frankfurter: So, when the decision came down they decided by a rule of law that you did not argue?

Mr. Porrata: You are right, Sir. Of course I cannot explain that. The court went off the really applicable law.

Our reply brief contains all the decisions of the Courts and cites cases in England, Kentucky, Massachusetts—everywhere and the general principle that the courts will not let a man get away with the fruits of his fraud or bad faith.

Mr. Associate Justice Frankfurter: Did you apply for a re-hearing to the Supreme Court of Puerto Rico?

Mr. Porrata: We applied for a re-hearing but they were in vacation. Therefore, we appealed.

Mr. Associate Justice Frankfurter: Did you before the Circuit Court of Appeals raise the point that this was a surprise decision?

Mr. Porrata: Yes, that it was against law.

Mr. Associate Justice Black: What is the new point you say you were surprised with, or that they surprised you with?

Mr. Porrata: What, Sir, I am sorry——

Mr. Associate Justice Black: What is the new point they surprised you with?

Mr. Porrata: After finding that everyone knew of the option the surprise was this: they decided the ejectment case in our favor, and then——

Mr. Associate Justice Black (interposing): They decided something about bad faith?

Mr. Porrata: I say we were surprised when they let Respondents escape with the fruits of their bad faith in this case; such ruling being against law.

Mr. Associate Justice Black: As I read the record, at page 486, they held there was no bad faith.

Mr. Porrata: Where is that, Sir?

Mr. Associate Justice Black: At page 486 of the transcript of record, the Opinion of the Court, we find this:

> "The court comes to the conclusion that neither conspiracy nor fraud on the part of the defendants against the plaintiffs in these cases has been shown."

Mr. Porrata: There is the inescapable error: fraud is implied from knowledge. The court found they knew and acted deliberately.

Mr. Associate Justice Black: They then say:

> "Having reached the foregoing conclusions, the court deems it unnecessary to consider the other questions of law raised and discussed in the present cases by counsel for both sides",

and they approve the finding.

Mr. Porrata: There is the inescapable error of the Court of Puerto Rico in this case: *fraud is implied from notice.*

Mr. Associate Justice Frankfurter: You contend that they are not purchasers in good faith.

Mr. Porrata: They did not purchase in good faith. The whole matter of knowledge carries the implication of fraud.

Mr. Associate Justice Roberts: As I understand it, wherever there is a record system you are bound by the record.

Mr. Porrata: Yes.

Mr. Associate Justice : But you are also equitably bound by notice of the fact if it is not on record.

Mr. Associate Justice Black: The Supreme Court of Puerto Rico said, in substance, "Never mind if he knew it. We are going to hold, from now on, in Puerto Rico, that a man who has knowledge of that and acts as though he had not the knowledge is acting lawfully".

What you say is that the Supreme Court of Puerto Rico held that.

Mr. Porrata: Yes, but that it was wrong in not applying the real law to this case.

Mr. Associate Justice Black: And you want us to say that they did not have a right to hold that?

Mr. Porrata: Yes. The holding is contrary to law.

Mr. Associate Justice Black (interposing): To what the Court held before?

Mr. Porrata: And to all principles of law and equity to which we are entitled to look for in our jurisdiction.

Mr. Associate Justice Black: And is it contrary to the statutes?

Mr. Porrata: Yes, it is, the statute of good faith; that is the unwritten law which requires good faith in human dealings as a matter of public policy.

Mr. Associate Justice Black: What statute?

Mr. Porrata: That no one can escape with the fruits of bad faith.

Mr. Associate Justice Black: Where is that in the brief?

Mr. Porrata: Everywhere; it is the backbone of our theory, that no court should allow the wrongdoer to escape with the fruits of his wrong. To hold as the Court did is bad law everywhere; obviously so.

The Supreme Court of Puerto Rico committed patent error, that is all.

I am sure that this Supreme Court cannot be satisfied with that decision.

(Thereupon the oral argument in the instant case was concluded.)

Respectfully submitted,

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FRED W. LLEWELLYN,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 497.—October Term, 1943.

Mario Mercado e Hijos, Petitioner,
vs.
Elvira Olivieri Commins, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[May 29, 1944.]

Mr. Chief Justice Stone delivered the opinion of the Court.

Rule 39(b) of the Court of Appeals for the First Circuit, effective September 20, 1940, authorizes the summary dismissal or affirmance of judgments appealed from the Supreme Court of Puerto Rico involving only questions of local law, unless it appears from the record and appellant's required "statement on appeal" that the judgment appealed from "is 'inescapably wrong' or 'patently erroneous' (*Sancho Bonet* v. *Texas Co.*, 308 U. S. 463 (1940))". In this, as in the companion case, *DeCastro* v. *Board of Commrs. of San Juan*, No. 349, decided this day, we granted certiorari on a petition raising important questions concerning the appellate review by federal courts of decisions of the Supreme Court of Puerto Rico in matters of local concern. The petition here presents for decision the question (1) whether the application of Rule 39(b) involves an abdication of the duty of the Court of Appeals to hear and decide such appeals on the merits, on brief and argument, as are other appeals; and (2) whether the decision of the Insular Supreme Court of Puerto Rico is so manifestly correct as to make any appeal from it necessarily frivolous and thus warrant dismissal of the appeal without a hearing, on mere inspection of the face of the record.

Petitioner, an agricultural partnership, by petition in the insular District Court of Ponce, P. R., sought rescission of a sale of a plantation known as "Indios", made by respondent Commins to others of the respondents, as in violation and in fraud of an option to purchase the property given by respondent Commins to petitioner. After a trial, the District Court made findings of fact on the basis of which it gave judgment for respondents. The Su-

preme Court of Puerto Rico confirmed the findings of the District Court and affirmed the judgment. 60 D. P. R. 877 (Spanish edition). On appeal to the Court of Appeals for the First Circuit under 28 U. S. C. § 225(a), that court, on consideration of the typewritten record and appellant's statement on appeal, and without hearing argument and without an opinion, affirmed under its Rule 39(b).

The District Court and the Supreme Court both found the facts as follows: In 1922 respondent procured a loan from petitioner of more than $40,000, for which respondent Commins gave petitioner four promissory notes payable to "the holder by endorsement", secured by a mortgage, not specifically naming any mortgagee, on respondent Commins' undivided interest in two plantations, "Indios" and "Juanita", then owned jointly by her and her sister. At that time petitioner was a tenant of both plantations under lease, that of "Indios" expiring in 1937, that of "Juanita" in 1938. The mortgage contract stipulated that Mrs. Commins upon three months written notice might at any time before maturity pay the mortgage credits. It also provided that "the debtor, as a part of the consideration of this contract agrees with the partnership Mario Mercado e Hijos, so long as the mortgage credit herein constituted is not paid, to grant it priority to purchase and sell or lease her undivided joint interest in the estates 'Indios' and 'Juanita' upon the same price and terms" as those on which she should be willing to sell or lease to any other purchaser or lessee. It further provided "to this effect the debtor shall advise, unless such mortgage credit is paid . . . of any offer of sale or lease made to her".

The following year, 1933, petitioner sold the promissory notes to the heirs of Jose Tous Soto, the transfer being effected by delivery of the notes and by a deed executed by petitioner which purported to assign to the heirs the "mortgage credits" and guaranteed payment in monthly installments of the stipulated interest of 9% due on the notes less ¾ of 1%, which it was agreed petitioner should retain for itself. No mention was made in the deed of the option secured to petitioner by the mortgage contract but both of the insular courts made findings which petitioner contends establish that the option was not intended to be

assigned, but that the rights under it were to be retained by petitioner. Three years later, in 1936, the interests of the owners in the two estates were partitioned between Mrs. Commins and her sister, Mrs. Commins receiving the plantation "Indios" by the partition deed in which petitioner joined for the purpose of consenting to the partition. The trial court made findings which can be interpreted as meaning that all the respondents were in fact aware that it was the understanding of petitioner and the transferees of the mortgage creditors that the option was to remain the property of petitioner.

In February, 1937, Mrs. Commins gave a new short term mortgage for $45,000 on "Indios" planation to respondent Manuel Francisco Lluberas Passarell. The proceeds, to the extent of $41,000, were by her direction used to pay her mortgage indebtedness, with three months interest in advance, to the heirs of Jose Tous Soto, the transferees of the mortgage credits, who, on receipt of the payment, cancelled the mortgage. Immediately following the cancellation Mrs. Commins sold and conveyed by deed the estate "Indios" to respondent Lluberas Passarell and his sisters, who are also respondents. It is this deed which petitioner seeks to cancel as in violation of the option.

In affirming the judgment of the Ponce District Court which denied the petition for cancellation of the conveyance, the Supreme Court of Puerto Rico rested its decision on two independent grounds, either one of which, if supportable, is sufficient to sustain it. Construing and applying the relevant provisions of Art. 152 of the Puerto Rico mortgage law and §§ 1418 and 1759 of the Civil Code of Puerto Rico, 1931 edition,[1] it concluded that the transfer by petitioner of the mortgage credits to the heirs of Jose

[1] Article 152 of the Puerto Rico Mortgage Law provides:

"A mortgage credit may be conveyed or assigned to a third person in whole or in part, provided it be effected by means of a public instrument, notice of which is given to the debtor, and that it be recorded in the registry.

"The debtor shall not be bound by said contract to any further extent than he was by his own.

"The assignee shall be subrogated to all the rights of the assignor."

Section 1418 of the Civil Code of Puerto Rico provides:

"The sale or assignment of a credit includes that of all the accessory rights, such as the security, mortgage, pledge, or privilege."

Section 1759 of the Civil Code of Puerto Rico provides in part:

"The pledge and the mortgage are indivisible, even if the debt should be divided among the legal representatives of the debtor or of the creditor.

"Therefore, an heir of the debtor who may have paid a part of the debt

Tous Soto without reservation of the option to purchase, "conveyed" to the heirs, petitioner's rights under the option as an inseparable incident of the credits so that after the transfer petitioner was not entitled to exercise the option. It also concluded that since the option was for "so long as the mortgage credit here constituted is not paid" it became "extinguished" by virtue of the payment of the mortgage and could not thereafter be exercised. It further held that petitioner had failed to prove that the sale of "Indios" by respondent Commins, after the assignment by petitioner of the mortgage credits, and after the payment of the mortgage and the expiration of the option, was in fraud of petitioner's rights under the option.

The court did not pass upon the contention that the option to purchase was void as an agreement "enabling the mortgagee to adjudicate to itself the mortgage property" comparable to agreements for collateral advantage "clogging" the equity of redemption, deemed unlawful in Anglo-American mortgage law. *Jennings* v. *Ward*, 2 Vern. 520; *Samuel* v. *Jarrah Timber and Wood Paving Corp., Ltd.*, L. R. [1904] A. C. 323; 21 Harv. L. Rev. 458. But assuming the validity of the option, as did the Supreme Court of Puerto Rico, its view that rights acquired by a mortagee as an incident to the mortgage debt passes to the transferee of the debt by assignment, whether mentioned in the assignment or not, is not unknown to our law. Cf. *Sheldon* v. *Sill*, 8 How. 441, 450; *Batesville Institute* v. *Kauffman*, 18 Wall. 151, 154; Jones on Mortgages, § 1033; and see *North British & Mercantile Ins. Co.* v. *Rose*, 228 Fed. 290, 292. And it is a familiar rule of our law that save in exceptional circumstances not present here an option can only be exercised in conformity to its terms and never after the time fixed for its expiration. *Waterman* v. *Banks*, 144 U. S. 394, 401-3; *Kelsey* v. *Crowther*, 162 U. S. 404, 409; *Lord Ranelagh* v. *Melton*, 2 Drewry and Smale, 278.

Petitioner has furnished us with no persuasive evidence that the law is otherwise in Puerto Rico. On the contrary the Puerto Rican Supreme Court's decision that the option was necessarily assigned with the mortgage is not without support in the statu-

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can not request that the pledge or mortgage be proportionately extinguished as long as the debt has not been paid in full.

"Neither can the heir of the creditor, who received his part of the debt, return the pledge nor cancel the mortgage to the prejudice of the other heirs who have not been paid."

tory provisions which it cited, and to which we have referred.[2] Whether the option was so transferred or not it is difficult to see upon what legal theory any system of law could in the circumstances of this case read into an option to purchase, a term prolonging the period specified for its exercise. Petitioner has advanced no such theory and cites no authority which would support it.

As we have said in the *de Castro* case, the duty of the Court of Appeals and of this Court to examine and appraise local law in cases brought for review from the insular courts cannot ordinarily be discharged summarily. But full argument in this case has not developed any issue of Puerto Rican law, or any question of the deference rightly to be paid to the decisions of the highest court of Puerto Rico, so substantial as to preclude the summary disposition made of this case by the Court of Appeals.

Affirmed.

[2] As the Puerto Rican Supreme Court pointed out, the option here could properly be regarded as "an accessory right" or "privilege", within the meaning of § 1418 of the Civil Code, quoted *supra* note 1. See Manresa, Commentaries on the Civil Code, Vol. 10, pp. 402-9.